

NO. _____

TEXAS CHILDREN'S HOSPITAL,

IN THE _____

Plaintiff

V.

DISTRICT COURT

KWOK DANIEL LTD., L.L.P., ROBERT S. KWOK, and THOMAS J. DANIEL

HARRIS COUNTY, TEXAS

Defendants.

**PLAINTIFF'S ORIGINAL PETITION AND
APPLICATION FOR TEMPORARY RESTRAINING ORDER,
TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION**

Texas Children's Hospital (hereinafter referred to as "TCH" or "Plaintiff") files this Original Petition and Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction ("Petition") against Kwok Daniel LTD., L.L.P., Robert S. Kwok, and Thomas J. Daniel (referred to herein as "Defendants"). With knowledge as to itself and its own acts and upon information and belief regarding other persons and matters, TCH alleges:

INTRODUCTION

1. This is an action for injunctive relief based upon TCH's famous and renowned Promise mark. These claims arise from Defendants' display and distribution of disparaging and inflammatory content on the website <https://kwoklaw.com>, which tarnishes and dilutes and blatantly infringes TCH's famous Promise mark, thus causing irreparable injury to TCH and its name and marks.

DISCOVERY LEVEL

2. TCH intends that discovery be conducted under Level 2 of Rule 190 of the Texas Rules of Civil Procedure.

THE PARTIES

3. TCH is a Texas corporation with offices in Harris County, Texas.

4. Defendant Kwok Daniel LTD., L.L.P. is a limited liability partnership organized under the laws of the state of Texas, with a place of business at 9805 Katy Fwy., Ste. 850, Houston, TX 77024.

5. Defendant, Mr. Robert S. Kwok (“Mr. Kwok”) is an individual and a citizen of the United States residing in Houston, TX. Mr. Kwok is a managing partner of Kwok Daniel LTD., L.L.P.

6. Defendant, Mr. Thomas J. Daniel (“Mr. Daniel”) is an individual and a citizen of the United States residing in Houston, TX. Mr. Daniel is a managing partner of Kwok Daniel LTD., L.L.P.

7. The current WHOIS report for the domain name <https://kwoklaw.com> identifies PrismaVPS Administrator with an address of 109 W. 17th Street, Cheyenne, WY, 82001 as the Registrant. A true and correct printout of the WHOIS report is attached hereto as Exhibit 1.

JURISDICTION

8. This is a suit for trademark infringement, dilution, and related claims under Texas statutory and common law, arising from Defendants’ use of the Promise mark in connection with the display and distribution of disparaging and inflammatory content on the website <https://kwoklaw.com>. This court has jurisdiction as provided in article V, §§ 1 and 8 of the Texas Constitution and §§ 24.007 and 24.008 of the Texas Government Code.

VENUE

9. Venue is proper in Harris County because all or a substantial part of the events or omissions giving rise to TCH's claims occurred here. Tex. Civ. Prac. & Rem. Code §§ 15.002(a)(1), 15.005.

FACTS

The Promise Trademark

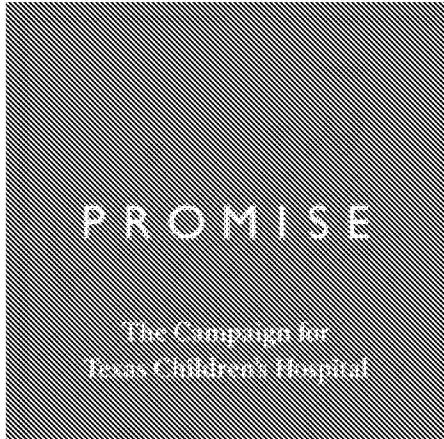
10. The Promise trademark ("Promise Mark") adopted and used by TCH is inherently distinctive, fanciful, and arbitrary as applied to charitable goods and services.

11. TCH is a not-for-profit organization whose mission is to create a healthier future for children and women throughout our global community by leading in patient care, education, and research. TCH is consistently ranked among the top children's hospitals in the nation. TCH was built with the mission of providing highest quality care to all who need it. Each year, TCH has more than 3 million patient encounters. In order to carry out its mission of providing the best quality to care to all of its patients, TCH launched the charitable "Promise campaign" to further its key goals, namely, to offer hope, comfort and healing to the sickest children; to understand that a child's emergency can't wait; and to meet our patients' needs now and in the future.

12. Donations in connection with the Promise campaign also provide support for the construction of a new, 19-floor pediatric tower in Houston, Texas.

13. In or around January 2015, TCH created, adopted and commenced use of the Promise Mark, and variants thereof, to identify and distinguish its charitable Promise Campaign.

14. A representative rendering of the Promise Mark is included below:



15. No entities other than TCH are authorized to solicit or provide charitable services in the United States under or in connection with the Promise Mark.

16. The Promise mark, and variants thereof, have been extensively used by TCH in interstate commerce in connection with advertising and promoting TCH's "Promise Campaign" charitable services on the Internet, in national and local newspapers, trade and consumer magazines, on television and radio, and through direct mail. TCH's Promise mark is prominently presented on its website and informational literature. A true and correct copy of the Promise mark is attached hereto as Exhibit 2.

17. TCH has extensively and continually advertised and promoted the Promise mark, and variants thereof, within the United States for almost four years. TCH has expended substantial amounts of time, effort, and money over the years to ensure that the public associates those marks exclusively with TCH.

18. As a result of the time, effort, and money invested in its business, TCH has achieved a reputation for excellence in the healthcare and charitable services industries. As a result of its reputation for excellence, TCH enjoys a substantial demand for its healthcare and charitable services industries. Indeed, each year TCH has more than 3 million patient

encounters. Together with its reputation for excellence, TCH enjoys a tremendous goodwill in its trademarks.

19. By virtue of the extensive scope of the number of patients treated and the substantial sums spent to advertise and promote the products and services under TCH's Promise mark, and variants thereof, have acquired a strong secondary meaning in the minds of the purchasing public and the business community, and are now distinctive, famous, and serve uniquely to identify TCH's products and services. Through widespread and favorable public acceptance and recognition, these marks have become assets of incalculable value as symbols of TCH's products and services.

DEFENDANTS' WRONGFUL ACTIONS

20. On December 19, 2018, it came to TCH's attention that Defendants' were displaying and distributing on the website <https://kwoklaw.com> a disparaging and inflammatory article related to a lawsuit Defendants filed against TCH. At the top of that article, appears the famous and distinctive Promise mark associated with TCH and their charitable "Promise Campaign." A true and correct printout of that article as it appears on the <https://kwoklaw.com> website at the specific url: <https://kwoklaw.com/2018/12/kwok-daniel-to-depose-texas-childrens-over-infant-death/> is attached hereto as Exhibit 3.

21. The Promise mark appears in its entirety on the <https://kwoklaw.com> website, with the addition of a black "slash" drawn through the word "Promise." Defendants' intent was to draw attention to their website at <https://kwoklaw.com> by displaying and distributing this image in order to damage the reputation of TCH and TCH's charitable "Promise Campaign."

22. On December 20, 2018, TCH sent a letter to Defendants via e-mail and certified mail, advising of TCH's intellectual property rights and notifying them that its dissemination of the Promise mark image constitutes knowing and willful infringement and tarnishment of TCH's

valid trademark and a deliberate attempt to injure, defame, and debase TCH. TCH demanded that Defendants immediately and permanently remove the Promise mark image from the <https://kwoklaw.com> website and cease use, dissemination or publication in any media of TCH's intellectual property. That request was ignored. As of the filing of this Petition, the disparaging and inflammatory article, including the Promise mark, is still available on the <https://kwoklaw.com> website.

23. TCH is world-famous and highly respected in the healthcare and charitable services industries. Defendants' unauthorized display and distribution of the Promise mark actually dilutes and tarnishes the value of the TCH name and TCH's Promise mark.

24. Defendants' unauthorized display and distribution of the Promise mark in connection with the TCH name was and is conducted with actual knowledge of the reputation and goodwill inherent in TCH's marks, and TCH's ownership of such marks, and with the intent of trading off the goodwill that TCH has established in its business and symbolized by its name and marks.

25. Defendants' actions as described above (1) have the likelihood of affecting interstate commerce by deceiving or confusing the public throughout the nation; (2) suggest a non-existent connection between <https://kwoklaw.com> and TCH; (3) suggest that TCH has sponsored, licensed or approved of <https://kwoklaw.com>'s services or business; and (4) are likely to dilute, damage, blur and tarnish the distinctive value of TCH's marks. Such confusion, infringement, unfair competition and dilution is and will continue to irreparably injure TCH's goodwill, business reputation, and marks.

FIRST CAUSE OF ACTION (Texas Antidilution Statute)

26. TCH incorporates the allegations of the above paragraphs.

27. TCH has used the Promise mark, and variants thereof, for healthcare and charitable services for almost four years. Those marks have become extensively known and associated in the minds of the public exclusively with TCH's business, products and services.

28. TCH's distinctive Promise mark is valid at common law. It is a famous mark. Defendants' use of TCH's name and its Promise mark in connection with the disparaging and inflammatory article available at the <https://kwoklaw.com> website is likely to injure TCH's business reputation and to dilute the distinctive quality of TCH's marks.

29. As a proximate result of Defendants' conduct, TCH has suffered and will continue to suffer damage to its business, goodwill, reputation, and profits.

30. TCH has no adequate remedy at law for Defendants' infringement of TCH's mark. Unless Defendants are enjoined, TCH will continue to suffer irreparable harm.

**SECOND CAUSE OF ACTION
(Unfair Competition Under Texas Common Law)**

31. TCH incorporates the allegations of the above paragraphs.

32. TCH's Promise mark, and variants thereof, are each inherently distinctive, arbitrary and fanciful in connection with healthcare and charitable services. The Promise mark, and variants thereof, are strong and famous as a result of TCH's prominence in the marketplace and extensive advertising, promotion and sale of services under those marks. TCH's marks have acquired a strong secondary meaning.

33. TCH owns valid common law trademark rights in and to the Promise mark and its variants.

34. Defendants' wrongful use of TCH's name and its Promise mark in connection with the <https://kwoklaw.com> website is likely to deceive the public into the false belief that

Defendants' <https://kwoklaw.com> website and its business and services emanate from TCH and that there is a connection between TCH and Defendants.

35. Defendants' wrongful use of TCH's name and its Promise mark in connection with the <https://kwoklaw.com> website constitutes a false designation of origin, false or misleading description of fact, and false or misleading representation of fact, which is likely to cause consumer confusion, deception or mistake.

36. Defendants' TCH's name and its Promise mark in connection with the <https://kwoklaw.com> website constitutes unfair competition in violation of Texas common law.

37. As a proximate result of Defendants' willful acts, TCH has suffered and will continue to suffer great damage to its business, goodwill, reputation, and profits, while Defendants profit at TCH's expense.

38. TCH has no adequate remedy at law for Defendants' unfair competition. Unless Defendants are enjoined, TCH will continue to suffer irreparable harm.

39. Defendants' actions were committed intentionally, willfully and wantonly. TCH is therefore entitled to an award of punitive damages as an example to others and by way of punishing Defendants.

APPLICATION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION

40. TCH incorporates the allegations of the above paragraphs.

41. Defendants' ongoing use of TCH's name and its Promise mark in connection with the <https://kwoklaw.com> website continues to confuse, deceive, and mislead consumers in a way that is irreparably harmful to TCH. Specifically, TCH has no control over the nature or quality of the content that Defendants offer at the <https://kwoklaw.com> website, yet Defendants' use of TCH's name and its Promise mark in connection with the <https://kwoklaw.com> website suggests

to consumers and visitors to the site that TCH has sponsored or approved of the site and the disparaging and inflammatory article posted therein. Furthermore, Defendants' unauthorized use of TCH's name and its Promise mark in connection with the <https://kwoklaw.com> website, if allowed to continue, would undermine the incalculable value of that mark to TCH. A temporary restraining order ("TRO") and a temporary injunction are therefore necessary to prevent the irreparable injury that TCH will otherwise suffer before a final judgment can be rendered.

42. TCH therefore seeks a temporary restraining order that directs the Defendants, their agents, servants, employees, and attorneys, and all other persons, firms or corporations in active concert or participation with Defendants, including persons or institutions hosting or selling, leasing or otherwise providing servers to or for Defendants' website <https://kwoklaw.com>, to remove the Promise mark image from the <https://kwoklaw.com> website and any other media on which it is currently being disseminated.

43. TCH further seeks a temporary injunction that orders Defendants to cease and desist from any and all use, dissemination or publication in any media, including, but not limited to, any website owned or hosted by Defendants or any entity Defendants' are actively or passively associated with, or in any fashion, of the Promise mark currently appearing on the <https://kwoklaw.com> website, associated in any manner with TCH or its Promise mark.

CONDITIONS PRECEDENT

44. All conditions precedent to TCH's right to recovery against Defendants have been performed or have occurred.

JURY DEMAND

45. TCH requests that this case be tried to a jury.

PRAYER

TCH prays for judgment against Defendants as follows:

- Defendants, their agents, servants, employees, and attorneys, and those persons or institutions in active concert or participation with Defendants who receive actual notice of the court's order by personal service or otherwise be ordered to remove the Promise mark from the <https://kwoklaw.com> website and any other media on which it is currently being disseminated.
- Defendants, their agents, servants, employees, and attorneys, and those persons or institutions in active concert or participation with Defendants who receive actual notice of the court's order by personal service or otherwise, be permanently enjoined from distributing, displaying, and/or disseminating the Promise mark on the <https://kwoklaw.com> website and any other media on which it is currently being disseminated;
- Defendants, their agents, servants, employees, and attorneys, and those persons or institutions in active concert or participation with Defendants who receive actual notice of the court's order by personal service or otherwise, be permanently enjoined from permanently any and all use, dissemination or publication in any media, including, but not limited to, any website owned, controlled, hosted by Defendants, or that Defendants are actively or passively associated with, or in any other fashion, of the Promise mark, or any other disparaging, tarnishing, defamatory or otherwise unlawful materials, associated in any manner with the TCH and its Promise mark, or from directly or indirectly participating in, or assisting another party in, undertaking such action.
- TCH be awarded exemplary damages under Texas law for Defendants' willful and intentional acts;
- TCH recover its costs of court; and
- TCH recover such further relief to which it may be entitled.

Respectfully submitted,

Dated: December 21, 2018

/s/ Ali Dhanani

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ATTORNEYS FOR PLAINTIFF

AFFIDAVIT OF TINA M. CONLON

STATE OF TEXAS §
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COUNTY OF HARRIS §

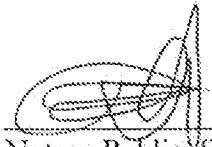
Before me, the undersigned notary public, personally appeared Tina Conlon, who upon the oath said:

1. My name is Tina Conlon. I am over the age of twenty-one years, of sound mind, capable of making this affidavit, and personally acquainted with the facts stated in it, which are true.

2. I am employed by Texas Children's Hospital (TCH) as Senior Risk Counsel. I have read the above TCH's original petition, application for temporary restraining order, and application for preliminary injunction (the Petition), including all of the factual statements contained in it. Those statements are based upon either my own personal knowledge or upon my information and belief, based upon information provided by other employees of TCH or my review of TCH's records. Based upon my personal knowledge, information, and belief, all of the factual statements in the Petition are true and correct.


Tina M. Conlon

This instrument was acknowledged before me on December 21, 2018.


Notary Public, State of Texas

